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ATTORNEY FOR APPELLEE:

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**IN THE  
COURT OF APPEALS OF INDIANA**

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No. 93A02-0803-EX-196

APPEAL FROM REVIEW BOARD OF THE  
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT  
Cause No. 08-R-159

**August 21, 2008**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Nailah D. Alaka-Muhammad appeals the determination of the Review Board of the Indiana Department of Workforce Development (“Review Board”), which affirmed the decision of the Administrative Law Judge (“ALJ”) dismissing her appeal for lack of jurisdiction. Alaka-Muhammad presents two issues for review, namely:

1. Whether the Review Board abused its discretion when it refused to accept additional evidence.
2. Whether the Review Board erred when it affirmed the dismissal of her appeal for lack of jurisdiction.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

From October 2006 until sometime in 2007, Alaka-Muhammad worked for Deering Cleaners.<sup>1</sup> In 2007, Alaka-Muhammad’s employment ceased. Alaka-Muhammad then applied to the Indiana Department of Workforce Development (“Department”) for unemployment benefits. On August 20, 2007, the Department mailed a notice to Alaka-Muhammad of the claims deputy’s decision to suspend benefits because Alaka-Muhammad had been terminated from her employment for insubordination.<sup>2</sup> On September 10, 2007, Alaka-Muhammad filed her appeal from that decision.<sup>3</sup>

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<sup>1</sup> The exact term of Alaka-Muhammad’s employment is unclear from the record provided, but the term is not necessary to our resolution of the case.

<sup>2</sup> Alaka-Muhammad disputes that she was terminated for cause. Moreover, her employer testified at the hearing before the ALJ that Alaka-Muhammad had quit her job. But, as discussed below, the reason for Alaka-Muhammad’s cessation of employment is not relevant to the resolution of the issues before us.

<sup>3</sup> The record contains discrepancies regarding the date of the appeal to the ALJ. A handwritten notation on Alaka-Muhammad’s appeal states that she is appealing the “timeliness of appeal,” next to the handwritten date “9/12/07.” Appellee’s App. at 1. Next to Alaka-Muhammad’s signature on the appeal,

On October 18 and November 29, 2007, the ALJ held a hearing on Alaka-Muhammad's appeal. Alaka-Muhammad and her employer each appeared pro se. After the hearing, the ALJ issued a decision affirming the Department's decision. In its decision, the ALJ found and concluded as follows:

**FINDINGS OF FACT:** The ALJ finds that the Determination of Eligibility was mailed on August 20, 2007. [Alaka-Muhammad] filed her appeal on September 10, 2007. Since the appeal was filed 21 days after the Determination of Eligibility was mailed, the appeal is untimely on its face. [Alaka-Muhammad] verified the address on The Determination of Eligibility as being correct. [Alaka-Muhammad] confirmed that she receives mail at this address. [Alaka-Muhammad] maintained that another individual by the same name that previously lived at the address must have been receiving her mail. The ALJ finds this explanation not to be credible. The ALJ finds that [Alaka-Muhammad] received the Determination of Eligibility from the Department in a timely manner, but failed to file the appeal within the time allotted. The ALJ finds that the appeal was untimely filed. The ALJ finds that he lacks jurisdiction to decide the appeal on its merits.

**CONCLUSIONS OF LAW:** The ALJ concludes that he lacks jurisdiction to decide the merits of [Alaka-Muhammad's] appeal, due to its untimely filing. "In cases where the claimant's benefit eligibility or disqualification is disputed, the department shall promptly notify the claimant and the employer . . . as to the . . . eligibility of the claimant for benefits. . . . [U]nless the claimant or such employer, within [thirteen (13)] days after such notification was mailed to the claimant or employer's last known address . . . asks for a hearing before an administrative law judge thereon, such decision shall be final and benefits shall be paid or denied in accordance therewith." Ind. Code §§ 22-4-17-2(e); 22-4-17-14(c). When an appealing party files an appeal in an untimely manner, the administrative law judge has no jurisdiction or authority to proceed on [the] merits of the appeal. Malcom v. Review Board of the Indiana Employment Security Division, 479 N.E.2d 1333 (Ind. [Ct.] App. 1985).

The ALJ concludes that he has no jurisdiction or authority to proceed on the merits of the appeal.

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she wrote the date "8/5/07." Id. We note these discrepancies for the record, but, as discussed below, we are bound by the ALJ's finding that the appeal was filed on September 10.

**DECISION:** The initial determination of the deputy is affirmed. [Alaka-Muhammad's] benefit rights are suspended effective week ending June 23, 2007 until [Alaka-Muhammad] has earned the weekly benefit amount in each of eight weeks. . . .

Appellee's App. at 3-4 (eighth alteration original).

On January 16, 2008, Alaka-Muhammad appealed the ALJ's dismissal of her appeal to the Review Board. With her appeal, Alaka-Muhammad submitted a letter from the United States Postal Service ("USPS") regarding problems she had experienced with her mail delivery ("USPS letter"). On February 12, 2008, the Review Board sent notice to Alaka-Muhammad of its decision to affirm the ALJ's dismissal, stating:

This matter is before the Review Board on a timely appeal by the adversely affected party from a decision by Administrative Law Judge WAYNE WARF. No hearing was held by the Review Board, and no additional evidence was accepted.

After examining the record, the Review Board adopts and incorporates by reference the findings of fact and conclusions of law of the Administrative Law Judge and affirms the Administrative Law Judge's decision on this 12TH day of February, 2008.

Appellee's App. at 7. Alaka-Muhammad now appeals.

## **DISCUSSION AND DECISION**

### **Issue One: Additional Evidence<sup>4</sup>**

Alaka-Muhammad contends that her appeal from the decision suspending her unemployment benefits should not have been dismissed for lack of jurisdiction. In support, she argues that she had trouble receiving mail at her home, and she relies on the USPS letter, dated January 14, 2008, in which the USPS acknowledged that some of

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<sup>4</sup> It is not clear from Alaka-Muhammad's brief the extent to which she is arguing that the Review Board should have accepted additional evidence. Nevertheless, we consider that issue because Alaka-Muhammad relies on that additional evidence in support of her argument that the dismissal of her appeal was improper and because the Department addresses the issue of additional evidence in its brief.

Alaka-Muhammad's mail had been erroneously diverted to another address. Alaka-Muhammad submitted the USPS letter with her appeal to the Review Board, but the Board did not consider that evidence.

The admission of additional evidence is within the Review Board's discretion. Ritcheson-Dick v. Unemployment Ins. Review Bd., 881 N.E.2d 54, 56 (Ind. Ct. App. 2008). But

[e]ach hearing from the review board shall be confined to the evidence submitted before the administrative law judge unless it is an original hearing. Provided, however, the review board may hear or procure additional evidence upon its own motion, or upon written application of either party, and for good cause shown, together with a showing of good reason why such additional evidence was not procured and introduced at the hearing before the administrative law judge.

646 Ind. Admin. Code 3-12-8(b) (2008).

Here, the USPS letter was not yet in existence at the time of Alaka-Muhammad's hearing before the ALJ. When she appealed the dismissal to the Review Board, she attached the USPS letter but did not show good reason why the USPS letter had not been procured and introduced at the hearing before the ALJ. Indeed, the only reference to the USPS letter in Alaka-Muhammad's appeal to the Review Board states, "See enclosed letter." Appellee's App. at 6. We recognize that Alaka-Muhammad has been representing herself in these proceedings, but that fact does not relieve her of the obligation to follow the statutory requirements and rules of procedure. See, e.g., Ramsey v. Review Bd. of the Ind. Dep't of Workforce Dev., 789 N.E.2d 486, 487 (Ind. Ct. App. 2003) (pro se claimant appealing denial of unemployment benefits is held to same rules

of appellate procedure as trained legal counsel). Alaka-Muhammad's claim that the Review Board should have considered the USPS letter as additional evidence must fail.

### **Issue Two: Timeliness of Appeal**

Alaka-Muhammad also contends that the Review Board erred by affirming the ALJ's dismissal of her appeal. On judicial review of an unemployment compensation proceeding, we determine whether the decision of the Review Board is reasonable in light of its findings. KLR, Inc. v. Ind. Unemployment Ins. Review Bd., 858 N.E.2d 115, 117 (Ind. Ct. App. 2006). We are bound by the Review Board's resolution of all factual matters; thus, we neither reweigh evidence nor reassess witness credibility. Id. Rather, we consider only the evidence most favorable to the Board's decision and the reasonable inferences to be drawn therefrom, and if there is substantial evidence of probative value to support the Board's conclusion, it will not be set aside. Id. When, however, an appeal involves a question of law, we are not bound by the agency's interpretation of law, and we will reverse a decision if the Board incorrectly interprets a statute. Id.

Here, the Department mailed its notice of the suspension of benefits on August 20. Indiana Code Section 22-4-17-14(e) provides that a Department decision is final unless a claimant asks for a hearing before an administrative law judge within ten days of the mailing date of the notice. Indiana Code Section 22-4-17-14(c) adds three days to that deadline, for a total of thirteen days. But the ALJ found that Alaka-Muhammad did not file her appeal until September 10, twenty-one days after the mailing date of the notice. As such, Alaka-Muhammad's appeal was not timely filed.

“[W]hen a statute contains a requirement that notice of intention to appeal shall be filed within a certain time, strict compliance with the requirement is a condition to the acquiring of jurisdiction, and non-compliance with the requirement results in dismissal of the appeal.” Szymanski v. Review Bd. of the Ind. Dep’t of Workforce Dev., 656 N.E.2d 290, 293 (Ind. Ct. App. 1995); Malcom v. Review Bd. of Ind. Employment Sec. Div., 479 N.E.2d 1333, 1334 (Ind. Ct. App. 1985). Alaka-Muhammad’s appeal was not timely filed. Therefore, the ALJ correctly determined that he lacked jurisdiction over her appeal.

Still, Alaka-Muhammad contends that the evidence does not support the finding that her appeal to the ALJ was untimely filed. She argues that, at the time she was awaiting the Department’s decision on her application for unemployment benefits, some of her mail was being forwarded to another family due to an error at the post office. But the ALJ found that explanation “not to be credible.” Appellee’s App. at 3. We are bound by that finding. See KLR, Inc., 858 N.E.2d at 117. And, again, because Alaka-Muhammad did not submit the USPS letter to the Review Board in accordance with 646 Indiana Administrative Code 3-12-8(b), the Board was not required to consider the letter as evidence. The Review Board adopted and incorporated the ALJ’s findings into the Board’s decision. Alaka-Muhammad has not shown that the Review Board’s decision is unreasonable in light of its findings.

Affirmed.

MAY, J., and ROBB, J., concur.